

# THE CZECH AND SLOVAK LAW OF RESTITUTION\*

## A Brief Outline

by Volker G Heinz

1. Restitution proceedings in the former Czechoslovakian Federal Republic (CSFR) are based on three Federal Acts, i.e.:
  - 1.1 The Small Federal Restitution Act (SFRA) of October 2 1990;
  - 1.2 The Large Federal Restitution Act (LFRA) of February 22 1991; and
  - 1.3 The Federal Land Act (FLA) of May 21 1991.
  
2. Whilst the SFRA deals with all kinds of small scale nationalisation measures of the late 50s, the LFRA and the FLA deal with all measures of illegal state interference against property and people after February 25, 1948, the day of communist takeover, unless already covered by the SFRA. Among the two 1991 Acts, the FLA specifically deals with restitution of agricultural land.
  
3. On April 15, 1992, the Czech Republic, now no longer part of the Czechoslovak Federal Republic, enacted the Czech Republic Restitution Act (CRRRA), reversing some of the injustice of the 1945 Beneš-decrees. Those ethnic Germans and Hungarians, once collectively branded "Nazi-Collaborators", who remained in the country and who were given back Czechoslovak citizenship between 1948 and 1953, are now entitled to reclaim property then taken away from them. The Act does not offer any remedies to ethnic Germans and Hungarians who were expelled from the country, nor to Jews thus effected.
  
4. All restitution claims had to be made before the expiry of a time limit which has occurred years ago. However, as a consequence of a recent Czech Republic Constitutional Court ruling, a new deadline, May 1, 1996, applies for all claims under the LFRA, FLA and CRRRA where claims were rejected or not made for lack of residency of the claimant.

---

\* speech given in 1994 in Melbourne on occasion of the IBA conference.

5. The four above mentioned Acts offer basically three kinds of remedies:
  - 5.1 Restitution in kind;
  - 5.2 Compensation on a mixed cash/state security basis;
  - 5.3 Largely declaratory invalidations of non-property infringements like imprisonment, expulsion and job termination without further compensation or damages.
  
6. Where restitution is granted, property is returned free from any obligations incurred after nationalisation. However, existing lease agreements will run for up to another ten years unless they expire earlier. There is a strict duty of care on the current holder of the property once he has knowledge of pending restitution proceedings.
  
7. Compensation is given, where restitution is excluded in accordance with one of the following four groups of cases:
  - 7.1 Restitution is physically impossible;
  - 7.2 The claimant elects compensation because:
    - (a) the property has undergone substantial alteration; or
    - (b) the property is largely destroyed; or
    - (c) the claimant has already received partial compensation, i.e. does not wish restitution in exchange for repayment of compensation earlier received;
  - 7.3 The current holder of the property is exempt from restitution because:
    - (a) he is a natural person who had acquired the property legally and in good faith; or
    - (b) the holder is a foreign element company; or
    - (c) the current holder is a foreign state;
  - 7.4 The property now serves public purposes.
  
8. Where compensation is applicable the amount is limited to 30,000 Czech crowns in cash, the remainder to be offered in state securities. Cash payment goes only to the former owner himself, not his legal successors. In rare cases the cash limit is raised to 60,000 (where all non-real estate property of a natural person had been confiscated).
  
9. Compensation for agricultural land is only given where both the original land and a comparable substitute parcel of land are not available. Compensation may include the value of dead livestock and abandoned crops.

10. As to the monetary valuation of the property, this valuation follows the valuation rules in force at the date the applicable restitution act came in force. A further restriction on restitution was later (February 1992) removed: land was initially limited to parcels under 150 hectares for non-agricultural land and 250 hectares for farm land.
  
11. One further important restriction applied until recently: only natural persons who were Czech or Slovak citizens and resident in the CSFR were eligible for restitution under the LFRA, the FLA and CRRA. The residential requirement was scrapped as a result of the decision of the Czech Republic Constitutional Court of July 1994. This requirement was held to be unconstitutional, the decision of course inviting a new wave of claims. As far as citizenship is concerned, the legal situation is fairly complicated. Since most of the former owners may not be alive any longer, any claimant must establish Czech or Slovak citizenship. That may turn out to be rather difficult. The claimant may never have acquired such citizenship or, if acquired, may have lost it, for instance by way of marriage or express declaration. A number of legal questions involving citizenship are not settled yet. Some of those unsettled questions are related to the Imperial Decree of the Austrian Emperor of 1832.
  
12. As to the SLA, the following subjects are entitled to reprivatization remedies:
  - 12.1 Natural persons;
  - 12.2 Companies;
  - 12.3 Natural persons being partial owners of the property or shareholders in a company which itself owned the property, in proportion to their share in the company;
  - 12.4 Certain heirs of natural persons in proportion to their share in the estate. However, certain classes of heirs are excluded, for example grandchildren of siblings of the original owner or the heirs of a person bequeathed with the restitution rights, i.e. the beneficiaries of a legacy.

13. Who is to return or pay?
- 13.1 Generally speaking it is "the state". Under the LFRA and FLA, it is the republican government, under the SFRA it is the ministries administering the properties claimed.
  - 13.2 Natural persons who acquire property either illegally or as a result of personal involvement in persecuting the former owner must return their property.
  - 13.3 Foreign natural persons and entities who acquired property after October 1 1990, i.e. after the Small Federal Restitution Act came into force, must return the property or pay compensation.

14. A peculiarity of the Czech and Slovak restitution process is that, with one exception I will mention in a moment, there is no restitution authority. Claims therefore are to be made directly to the current holder of the property. If he does not consent to the return within 30 days after the demand was lodged, the case may be brought before the court.

The one exception to the rule that no restitution authority is involved concerns agricultural land. Here a demand against the current holder has to be brought simultaneously with an application to the regional Land Office. This office may veto, amend or even compel a subsequent agreement. Public policy considerations like the protection of wildlife are what the Land Office is concerned with.

15. It may have become clear in the course of my short presentation that the Czech and Slovak restitution system suffers from a number of shortcomings. The following criticisms have been made over the years:

- 15.1 The amount of compensation is insufficient:
  - (a) the cash compensation to the former owner amounts to only US\$ 1,000;
  - (b) the remainder is handed over in state securities the value of which is very questionable;
  - (c) the meagre compensation is further diminished by deductions by taking into account third party payments relating to the property.
- 15.2 No compensation is offered to ethnic Germans, ethnic Hungarians and Jews who were expelled from the country under the Beneš-decrees. The CRRA offers compensation only to those members of the above groups who stayed in the country and to whom Czechoslovak citizenship was returned.

- 15.3 Since there is no overall restitution authority, there is practically no information on the extent of the monies or values involved in the restitution process. Very rough estimates speak of US\$ 10 billion to be involved in the restitution process, of which US\$ 750 million were paid in cash.
- 15.4 Rather than improving the faulty restitution process, the government gets actively involved in dubious behaviour, for instance by quickly selling the Rakona-works to a foreign investor when the government knew or ought to have known the former owner's impending decision to lodge a restitution claim.
- 15.5 It is widely alleged that the former aristocracy received priority treatment with respect to their restitution claims.
16. Although I have a general knowledge of the Czech and Slovak restitution law, I would like to stress that I am not an expert in this area, being neither Czech nor Slovak, nor capable of speaking their languages, nor being legally qualified in the Czech Republic or Slovakia. However, my knowledge derives largely from reading a number of high quality articles published in Germany and the US and from handling, jointly with a Czech colleague, a number of restitution cases.

Thank you for your attention.

The Author, a German attorney and notary and English Barrister-at-law, is a Berlin resident partner with Wessing Berenberg-Gossler Zimmermann Lange.